

Service Date: October 2, 1987

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Montana Public)	UTILITY DIVISION
Service Commission's Investigation of)	
the Merger of the Pacific Power and)	DOCKET NO. 87.9.51
Light Company and the Utah Power and)	
Light Company.)	ORDER NO. 5298

* * * * *

ORDER INITIATING INVESTIGATION

* * * * *

INTRODUCTION

On or about August 12, 1987, the Pacific Power and Light Company (PP&L) and the Utah Power and Light Company (UPL) announced publicly that they had reached a definite agreement to merge the two companies. On August 26, 1987, Frederic Reed, a PP&L Vice President, met publicly with the members of the Montana Public Service Commission (PSC or Commission) to discuss the impacts of the proposed merger upon the rates and services offered by PP&L in its Montana service territory. At that time, Mr. Reed indicated

that he did not believe that the merger would have any detrimental impacts upon PP&L's ratepayers in Montana.

On September 17, 1987, PP&L filed an application with the Commission for approval of the various security issuances required to effectuate the proposed merger. See Docket No.87.9.49. On September 28, 1987, the Commission voted to waive the 30 day deadline for consideration of such an application, extending the deadline to February 17, 1988. See § 69-3-503, MCA.

The Commission, by this order, does not question the good faith of the assurances provided by Mr. Reed; however, because of its statutory responsibilities, the Commission finds it necessary to make an independent determination of the extent of its jurisdiction and the ramifications of the proposed merger. The necessity of such an examination is enhanced by the possibility that other utilities under the Commission's jurisdiction might choose a similar course in the future. In this order, the Commission also consolidates the further consideration of Docket No. 87.9.49 into this investigation.

DISCUSSION AND ANALYSIS

Pacific Power & Light Company presently provides retail electric service to approximately 28,000 consumers in northwest

Montana. It also provides retail electric service in the states of Oregon, Washington, Wyoming, California and Idaho. Utah Power and Light does not provide utility service in the State of Montana.

On its face, the proposed merger appears to promote the public interest and benefit the present customers of PP&L and UPL by integrating electric utility properties now separately owned and operated. The consolidation could result in better utilization of existing and potential power resources of the two companies. The combined transmission capabilities of PP&L and UPL could enhance both the efficiency and reliability of service to retail customers as well as opportunities for wholesale power sales to the Southwestern United States. The consolidation of generation and transmission resources may postpone the addition of costly resources for both companies. Further, the consolidation of resources and operations and the economies of scale derived from the merger may also allow the consolidation of overlapping functions and result in future operating savings.

However, at this point, and from the Commission's position, these potential benefits are speculative. Further, several other concerns with the proposed merger have been raised, which merit further examination. These concerns include, but are not limited to: the control over transmission access to the southwest; the future allocation of revenue requirements between jurisdictions; the effects upon the BPA exchange agreements; and the potential for displacement by FERC of regulatory authority currently exercised by the various state commissions.

The Commission has the statutory duty to assure that ratepayers receive adequate service at reasonable rates. The

Commission believes, at least preliminarily, that the proposed merger could have a potential effect on both rates and service.

The Commission's duty to assure adequate service to a public utility's customers is a broad one. Not only must that service be available tomorrow; it must also be available in the reasonably foreseeable future. Until some of the uncertainties and possibilities are investigated, the Commission is not assured that, under the situation presented by the proposed merger, it would be able to satisfy its statutory responsibilities.

JURISDICTIONAL AUTHORITY

1. The Commission has the statutory authority to supervise, regulate and control public utilities. 69-3-102, MCA.

2. The Commission has the statutory authority to regulate "the mode and manner of all investigations and hearings of public utilities and other parties before it." 69-3-103, MCA

3. The Commission has the statutory authority "to inquire into the management of the business of all public utilities, shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any public utility all necessary information to enable the Commission to perform its duties." 69-3-106, MCA.

4. The Commission has the statutory duty to enforce Montana's laws as they relate to Montana's public utilities. 69-3-110, MCA.

5. Utilities are required by statute to render "reasonably adequate service and facilities" at "reasonable" and "just" rates. 69-3-201, MCA.

6. The Commission has the statutory authority to institute an investigation on its own motion of "rates, tolls, charges, rules, practices and services" of a public utility. 69-3-324, MCA.

7. See generally, Montana Power Co. v. Public Service Commission, ___ Mont. ___, 671 P.2d 604 (1983).

ISSUES TO BE PRESENTED

In view of the previous discussion, the Commission finds that, at a minimum, the following issues must be addressed:

- 1) Does the Commission have jurisdiction over the proposed merger? That is, does review of the proposed merger fall under the Commission's statutory duty to assure that ratepayers receive adequate service at reasonable rates?
- 2) If the Commission does have jurisdiction over the proposed merger, what further action is appropriate?

ORDER

1. The Commission staff shall draft and issue a proposed procedural order in this Docket.

2. The Commission staff shall schedule and notice a public hearing to allow this Commission to take testimony and receive public comments concerning issues raised in this Docket.

3. Docket No. 87.9.49 shall be consolidated into this Docket for further consideration and final disposition.

4. A copy of this Order shall be mailed to the Pacific Power and Light Company, the Utah Power and Light Company, the Montana Consumer Counsel, the state regulatory commissions in Idaho, California, Oregon, Wyoming, Washington, and Utah, and the Federal Energy Regulatory Commission.

Done and Dated this 30th day of September, 1987 by a vote of

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner

ATTEST:

Ann Purcell
Acting Secretary

(SEAL)